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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090**



**U.S. Citizenship
and Immigration
Services**

B5

DATE:

OFFICE: TEXAS SERVICE CENTER

JUL 19 2012

FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and information technology consulting company. It seeks to employ the beneficiary permanently in the United States as a computer systems analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that: (a) the beneficiary did not satisfy the minimum level of education stated on the labor certification, and (b) the petitioner did not have the continuing ability to pay the proffered wage of the beneficiary from the priority date.

On appeal, counsel maintains that the beneficiary has a master's degree or a foreign equivalent degree and that the petitioner has the continuing ability to pay the proffered wage from the priority date.

In adjudicating the appeal, the AAO noted that the beneficiary's three-year bachelor degree and two-year master degree from India are not comparable to a United States Master's degree. *See infra.* The AAO also observed that the petitioner had not established the continuing ability to pay from the priority date until the beneficiary obtains his lawful permanent residence. Thus, on April 13, 2012 the AAO sent the petitioner Notice of Intent to Deny (NOID) and requested additional evidence.

To demonstrate that the beneficiary has a master's degree or foreign equivalent degree, counsel submits the following evidence:

- A copy of a diploma showing that the beneficiary has been admitted to the degree of Bachelor of Science by [REDACTED]
- A copy of a diploma showing that the beneficiary has passed the Master in Computer Management examination held by [REDACTED]
- An evaluation of the beneficiary's academic credentials prepared by [REDACTED] and signed by [REDACTED] on October 13, 2008;
- An evaluation of the beneficiary's academic credentials prepared by [REDACTED] and signed by [REDACTED] on October 11, 2008;
- A letter dated August 26, 2008 from [REDACTED]
- A letter dated December 14, 2006 from [REDACTED]; and
- A sworn statement dated February 19, 2007 from [REDACTED]

Both the evaluations of the beneficiary's academic credentials state that the beneficiary has a master's degree or a foreign equivalent degree. [REDACTED] stated in his sworn statement that his university does not prohibit students, who graduate from a three-year-bachelor's program, from being admitted to a master's program. [REDACTED] and [REDACTED]

[REDACTED] both indicate that most students from India complete their master's degree in one or two years after their completion of a three-year-bachelor's program in India. Like Professor [REDACTED], counsel states in his appellate brief that American colleges do not necessarily require four-year bachelor degrees in order to admit students to their master programs. As evidence of his statements, counsel submits copies of U.S. master degrees issued to several individuals who have three-year bachelor degrees issued by Indian universities.

In addition, counsel states that the AAO has previously determined in other cases that a three-year bachelor's degree plus a two-year master's degree from universities in India are equivalent to a U.S. master's degree. Counsel derives this conclusion from the following AAO non-precedent cases: case numbers [REDACTED], [REDACTED], and [REDACTED].

Alternatively, counsel asserts that even if the beneficiary does not have a master's degree, he will still be qualified as a member of the professions holding an advanced degree due to having more than five years of progressive work experience. Counsel submits various letters from the beneficiary's past employers to show that the beneficiary has more than 10 years of experience in the information technology field as a computer systems analyst.

To show that the petitioner has the ability to pay, counsel submits copies of the following evidence:

- The petitioner's Schedule C (Form 1040), Profit or Loss from Business, for the years 2006 and 2007;
- The petitioner's Forms 1065, U.S. Return of Partnership Income, for the years 2008 through 2010;
- The beneficiary's Wage and Tax Statements (Forms W-2) issued by [REDACTED] Inc. for 2006; and
- The beneficiary's Wage and Tax Statements (Forms W-2) issued by the petitioner for the years 2007 through 2010.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

1. The Petitioner's Ability to Pay

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the ETA Form 9089 was accepted on December 13, 2006. The prevailing and the offered wage (or the proffered wage) set forth on the ETA Form 9089 is \$22.26 per hour or \$46,300.80 per year. Therefore, the petitioner is required to demonstrate the ability to pay \$22.26 per hour or \$46,300.80 per year from December 13, 2006 until the beneficiary obtains lawful permanent residence.

Based on the evidence submitted, the beneficiary received the following wages from the petitioner:

<i>Tax Year</i>	<i>Wage Received (Box 1, Form W-2) – in \$</i>
<i>2006</i>	<i>None²</i>

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² The wage received from [REDACTED] will not be considered since the petitioner and [REDACTED] appear to be separate and distinct legal entities. The court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, “Nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals

2007	20,000.00 ³
2008	68,749.99
2009	70,001.29
2010	56,795.00

The petitioner has paid in excess of the proffered wage in 2008, 2009, and 2010. Therefore, in order for the petitioner to meet its burden of proving by a preponderance of the evidence that it has the continuing ability to pay the proffered wage from the priority date, the petitioner must show that it has the ability to pay the full proffered wage of \$46,300.80 in 2006 and \$26,300.80 in 2007, which is the remainder between the amount already paid in 2007 and the proffered wage.

On April 13, 2012 the AAO sent the petitioner a Notice of Intent to Deny (NOID) and requested that the petitioner submit copies of the company's tax returns, audited financial statements, or annual reports for the years 2006 through 2010. In response to this request, the petitioner submitted copies of Schedule C of the Form 1040 for the years 2006 and 2007. We do not consider Schedule C of the Form 1040 as "tax returns" under 8 C.F.R. § 204.5(g)(2). The tax return is the Form 1040 (U.S. Individual Income Tax Return), and each schedule is a supporting document. Therefore, we will not consider the net income shown in the Schedule C as evidence of the petitioner's ability to pay and conclude that the petitioner has failed to demonstrate that it has the ability to continuously pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence.

1. Qualifications for the Job Offered

Further, the appeal must be dismissed, and the petition denied, as the petitioner has failed to demonstrate that the beneficiary has a master's degree or foreign equivalent.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is

or entities who have no legal obligation to pay the wage."

³ \$40,000 was paid by [REDACTED]

completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying the *plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this matter, with respect to the minimum level of education and experience required for the proffered position, Part H of the labor certification reflects the following requirements:

- H.4. Education: Minimum level required: Master's.
- H.4-B. Major Field of Study: Computer Science or Management.
- H.5. Is training required in the job opportunity? No.
- H.6. Is experience in the job offered required for the job? No.
- H.7. Is there an alternate field of study that is acceptable? No.
- H.8. Is there an alternate combination of education and experience that is acceptable? No.
- H.9. Is a foreign educational equivalent acceptable? Yes.
- H.10. Is experience in an alternate occupation acceptable? No.

Based on the information above, we conclude that the position specifically requires the beneficiary to have at least a Master's degree in either Computer Science or Management.

The record shows that the beneficiary possesses a foreign three-year bachelor degree (Bachelor of Science) and a foreign two-year master degree (Master in Computer Management). We consider that these degrees – the beneficiary's three-year bachelor degree plus two-year master degree – are comparable to a U.S. bachelor's degree, not a master's degree. Thus, we cannot sustain the appeal and approve the petition under the advance degree professional classification.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁴ According to its website, <http://www.aacrao.org>, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the

⁴ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

registration page for EDGE, <http://aacraoedge.aacrao.org/register/index.php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.”

Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at the following website: http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx (last accessed August 15, 2011). If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

EDGE provides a great deal of information about the educational system in India, and, while it confirms that the Master of Computer Management degree in this case is awarded to the beneficiary upon the completion of three years of study toward a Bachelor of Science degree plus two years of study toward the Master of Computer Management, the beneficiary’s academic achievements do not represent the attainment of a level of education comparable to a U.S. Master’s degree. The beneficiary’s Master of Computer Management, according to EDGE, represents the attainment of a level of education comparable to a bachelor’s degree in the United States.

Counsel asserts that the beneficiary has at least a bachelor’s degree or foreign equivalent degree since many U.S. universities will admit students from India who only have a three-year-bachelor’s degree. Professors [REDACTED] all state that students who have completed a three-year-bachelor program from India are not prohibited from being admitted to a U.S. master program and that these students, once they are admitted to a U.S. master program, often complete their schooling in one or two years. The AAO is not persuaded by these statements.

All of the educational evaluations including those from [REDACTED] and [REDACTED] conclude that the beneficiary has a bachelor and master’s degree or foreign equivalent degree. [REDACTED] concludes in her evaluation that the beneficiary has a degree equivalent to a U.S. master’s degree. She based her conclusion on the facts that (a) [REDACTED] is an accredited institution of higher learning in India, and (b) a bachelor degree is required for admission to the program. The conclusion, however, is not supported by corroborating evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Moreover, the conclusion is in direct conflict with EDGE, which states that the beneficiary’s Master of Computer Management degree is comparable to a bachelor’s degree in the United States, not a master’s degree.⁵

⁵ Additionally, a bachelor of science obtained after three years of university study in India is the equivalent of three years of university study in the United States, not a bachelor’s degree,

[REDACTED] concludes that the beneficiary has the U.S. equivalent of a Bachelor of Science degree from [REDACTED], India. He discusses Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses. Dr. [REDACTED] credibility is seriously diminished as he completely distorts an article by [REDACTED] and [REDACTED]. Specifically, [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree *following* a secondary degree from a CBSE or CISCE program *or* a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. Thus, Dr. [REDACTED] reliance on this article is disingenuous.

In the end, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). We choose not to use the discretion in this case, as the opinions conferred by the evaluators (Ms. [REDACTED] and Mr. [REDACTED]) differ from that given by EDGE.

Based on the evidence submitted, we can conclude that a student with a three-year bachelor's degree from India may be admitted to a master program without having a U.S. bachelor's degree or foreign equivalent degree in the United States. This possibility, however, does not lead us to determine that the beneficiary's Master in Computer Management is comparable to a U.S. Master's degree in either Computer Science or Management.

On appeal, counsel also cites several non-precedent AAO decisions (LIN-06-164-51652; LIN - 07-015-52532; LIN-05-242-51144), where the AAO held that a three-year-bachelor degree plus a two-year-master degree from universities in India equaled to a U.S. master's degree.

It may not be generally stated that an Indian three-year bachelor program plus a two-year master program are always equivalent to a U.S. Master's degree. Every case is different, and the

outcomes are driven by facts specific to the case. The AAO will not apply the outcomes of the cases cited by counsel, as the facts in this case are different from those referred by counsel.⁶

Further, the AAO finds that the petitioner cannot use the beneficiary's past and progressive experience to demonstrate that the beneficiary qualifies for the position. As noted earlier, the petitioner has indicated in part H, Line 6 and 8, respectively that no combination of education or experience is acceptable in the alternative, and that no alternate combination of education and experience is acceptable for the position offered. We cannot and should not look beyond the plain language of the labor certification that DOL has formally issued.

The beneficiary does not have a United States Master's degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. For this additional reason, the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁶ The case number [REDACTED] for instance, deals with a Master of Technology degree from an Indian university. The case number [REDACTED] deals with a Master of Computer Science degree from an Indian university. The case number [REDACTED] deals with a Bachelor of Technology degree conferred by a university in India.